

**FILED**

DEC 10 2010

PATRICK E. DUFFY, CLERK

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

MISSOULA DIVISION

|                             |   |                    |
|-----------------------------|---|--------------------|
| CHRISTOPHER R. DELL WEAVER, | ) | CV 10-61-M-DWM-JCL |
|                             | ) |                    |
| Plaintiff,                  | ) |                    |
|                             | ) |                    |
| vs.                         | ) | ORDER              |
|                             | ) |                    |
| UNITED STATES CUSTOMS &     | ) |                    |
| BORDER PROTECTION,          | ) |                    |
| CRAIG EISENBERG,            | ) |                    |
| ROSS LYLE, and JOHN DOE,    | ) |                    |
|                             | ) |                    |
| Defendants.                 | ) |                    |
| _____                       | ) |                    |

Plaintiff Christopher R. Dell Weaver initiated this case by filing a Complaint on May 28, 2010. Plaintiff, a pro se litigant, alleged that his civil rights had been violated and claimed personal injury damages. On September 21, 2010, Plaintiff filed a supplemental document entitled "Pleadings" which was his

submission of a preliminary pretrial statement. He referenced provisions of the Federal Tort Claims Act (“FTCA”), 28 U.S.C. § 2671 et seq., and alleged Defendants were liable under the FTCA for violations of Montana law as provided under 28 U.S.C. §1346(b). Plaintiff detailed the events that occurred during a border crossing from Canada into Montana on May 1, 2009. Defendants filed a motion to dismiss the Complaint under Federal Rules of Civil Procedure 12(b)(1) and (6) on September 29, 2010, with a supporting brief. Plaintiff did not respond to the motion to dismiss.

United States Magistrate Judge Jeremiah C. Lynch entered Findings and Recommendation (dkt #14) in this case on November 19, 2010. Judge Lynch noted that Weaver did not file a response brief to Defendants’ motion to dismiss and his failure to do so was deemed an admission that Defendants’ motion was well taken. Judge Lynch found that Weaver’s FTCA claims on the grounds that (1) the individual Defendants are immune from liability for FTCA claims, and (2) Weaver’s allegations fail to state a viable cause of action against the United States under the FTCA should be dismissed. Plaintiff did not timely object and so has waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court reviews the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir.

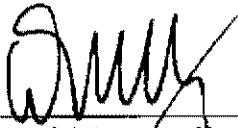
1981). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000).

I can find no clear error with Judge Lynch’s Findings and Recommendation.

IT IS HEREBY ORDERED that Judge Lynch’s Findings and Recommendation (dkt #14) are adopted in full and Defendants’ Motion to Dismiss (dkt #12) is GRANTED.

IT IS FURTHER ORDERED that the Complaint (dkt #1) is DISMISSED.

Dated this 10 day of December, 2010.

  
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Donald W. Molloy, District Judge  
United States District Court

